



DEFENCE FOI 460/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 11 December 2024 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

“Please provide the criteria and assessment documentation that allowed BARPA to not only on the tender list but being successful with this this tenderer when they do not meet the criteria for a SME as defined in s 50AAA of the Corporations Act 2001.”

FOI decision maker

3. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

4. I have identified three documents as falling within the scope of the request.
5. The decision in relation to each document is detailed in the schedule of documents.

Exclusions

6. Duplicates of documents, and documents sent to or from the applicant are excluded from this request. Defence has only considered final versions of documents.

Decision

7. I have decided to:
 - a. partially release three documents in accordance with section 22 [access to edited copies with exempt or irrelevant matter deleted] of the FOI Act on the grounds that the deleted material is considered exempt under section 47E(d) [Public interest conditional exemptions – certain operations of agencies] of the FOI Act; and
 - b. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

8. In making my decision, I have had regard to:
 - a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. relevant provisions of the FOI Act;
 - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
 - e. advice received from third parties under section 27 of the FOI Act.

REASONS FOR DECISION

Section 22 – Access to edited copies with exempt or irrelevant matter deleted

9. Section 22 of the FOI Act permits an agency to prepare and provide an edited copy of a document where the agency has decided to refuse access to an exempt document, or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.
10. The documents identified in the schedule of documents as being released in part contain exempt and irrelevant material that does not relate to the request.
11. Where whole pages are considered to be exempt in full or irrelevant to the scope of the request, these pages have been removed from the released document pack.
12. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the documents to you in an edited form.

Section 47E(d) –Public interest conditional exemptions – certain operations of agencies

13. Section 47E(d) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

(c) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

14. The Guidelines, at paragraph 6.115, provide that:

The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its operations in an expected manner.

15. Upon examination of the documents, I found that they contained information concerning the proper and efficient conduct of the operations of Defence.

16. The information contained within the documents relates to Defence procedures and information relating to external evaluation of tender applications received by AusTender. If the information was made publicly available it could reasonably have an adverse effect on the Department's ability to conduct, manage and perform these functions.
17. The Guidelines provide, at paragraph 6.112, that I should consider whether disclosure of the information 'would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient.' Given the nature of the information, its release would not lead to an efficient change.
18. I am satisfied that were the details of the Defence process of evaluation publicly available, it would have substantial adverse effects on the proper and efficient operation of the tender process. Further, I am satisfied of a reasonable expectation that the information could be used inappropriately and reasonably be expected to prejudice the operations of Defence.
19. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations - sections 47E(d)

20. Section 11A(5) of the FOI Act states:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

21. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors being whether access to the document would:

(a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);

(b) inform debate on a matter of public importance;

(c) promote effective oversight of public expenditure;

(d) allow a person to access his or her own personal information.

22. In my view, disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).



23. Paragraph 6.233 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

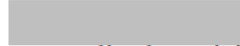
- an agency's ability to obtain confidential information;
- the management function of an agency; and

24. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you. Accordingly, I find that the information is exempt under sections 47E(d) of the FOI Act.

FURTHER INFORMATION

25. Some of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.

 Digitally signed
by 
Date: 2025.02.06
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Accredited Decision Maker
Security and Estate Group
Department of Defence